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IN THE

Supreme Court of the United States

No. 780

IVORY SLATER, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

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No. _____

IVORY SLATER, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Ivory Slater prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on the 19th day of November, 1963, affirming petitioner's conviction for the offering of a bribe to a juror; said judgment is appended to this petition.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in Cause No. 20327 entitled *"Ivory Slater v. United States of America"* is appended to this petition.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on the 19th day of November, 1963. The Petition for Rehearing was denied on the 27th day of December, 1963. The order denying Petitioner's Petition for Rehearing is appended to this petition.

Petition for Rehearing filed in the Court of Appeals was denied on the 27th day of December, 1963, said Petition for Rehearing is appended to this petition. On the 3rd day of January, 1964, the Court of Appeals entered its Order staying its mandate for a period of thirty (30) days from the 27th day of December, 1963, and until final disposition of the case by the Supreme Court, provided that within thirty (30) days from the 27th day of December, 1964. there should be filed with the Clerk of the Court of Appeals the certificate of the Clerk of the Supreme Court that certiorari petition and record have been filed.

The statutory provision which, it is believed, confers on the Supreme Court jurisdiction to review the judgment in question by Writ of Certiorari is Title 28, Section 1254 (1), *United States Code*, which reads as follows:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

QUESTION PRESENTED

The question presented is whether it was error to overrule a motion for a judgment of acquittal, where the

evidence is insufficient to sustain the descriptive, and material allegations in the indictment.

STATUTE INVOLVED

The Statute under which Petitioner was tried and convicted is Title 18, Section 206, *United States Code*, which reads as follows:

> "§206. Offer to judge or judicial officer
>
> Whoever, directly or indirectly, gives or offers any money or thing of value, or any promise or agreement therefor, or any other bribe, to any judge, juror, referee, arbitrator, appraiser, assessor, auditor, master, trustee, receiver, United States Commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, because of or with intent to influence his action, vote, opinion, or decision thereon, shall be fined not more than $20,000 or imprisoned not more than fifteen years, or both; and shall be disqualified from holding any office of honor, trust, or profit, under the United States. June 25, 1948, c. 645, 62 Stat. 692."

STATEMENT OF THE CASE

The indictment consisted of one count, and charged petitioner, as follows

> "1. That on September 10, 1962, there was on trial in the United States District Court for the Southern District of Texas, Houston Division, a certain cause then and there at issue between the United States of America and Lynn K. Peterson and William H. Scott, Jr., the said cause being Criminal No. 14,342 on the record and docket of said Court and in which LYNN K. PETERSON was charged with

violation of Section 7201, Title 26, United States Code, and Section 1001, Title 18, United States Code and WILLIAM H. SCOTT, JR., was charged with violation of Section 1001, Title 18, United States Code; that a petit jury was thereupon duly impaneled, selected, accepted, qualified and sworn, to try said cause, and that one Edward W. Singleton, Jr., was then and there selected, accepted, qualified and sworn as a member of said jury.

"2. That during the trial of said cause and on or about September 10, 1962, at Houston, Texas, in the Houston Division of the Southern District of Texas, within the jurisdiction of this Court, IVORY C. SLATER, the defendant herein, did unlawfully, wilfully, knowingly and feloniously offer and cause to be offered to said Edward Singleton, Jr., then and there being such juror as aforesaid and as such juror a person authorized by law of the United States to hear and determine said cause, a promise and agreement to give to the said Edward Singleton, Jr., for his sole use and benefit certain money, to-wit, Two Hundred Dollars ($200) of the currency of the United States of America, with intent to influence the action, vote, opinion and decision of the said Edward Singleton, Jr., as such juror as aforesaid, in the trial of said cause, and with intent to cause him the said Edward Singleton, Jr., as such juror and person as aforesaid, to determine therein unfavorably to the United States questions and matters which would come before him for determination as such juror and person, the said IVORY C. SLATER then and there well knowing said Edward Singleton, Jr., to be said juror and person as aforesaid. (Violation Title 18, United States Code, Section 206)."

Petitioner was convicted under the foregoing indictment, and was sentenced to a term of imprisonment of 5 years and a fine of $5,000 (R. 490).

REASONS FOR GRANTING THE WRIT

This petition ought to be granted for the reason that the Government failed to prove the descriptive, and material allegations in the indictment against Peterson and Scott. said indictment being an essential part of the indictment of petitioner, and pleaded therein. The Court of Appeals did not specifically pass upon the foregoing contention in its opinion, and denied petitioner's Petition for Rehearing, without a written opinion.

In order to make the foregoing clear, the following is taken from the record. (R. 122-123).

"MR. SUSMAN:

We would like to have this marked as Government Exhibit Number 1, and this as (24) Government Exhibit Number 2.

Your Honor, we won't have very many exhibits.

THE COURT:

Show these to opposing counsel, and tell us what they are.

MR. SUSMAN:

These are certified copies of the minutes of the Court on September 10th, Your Honor. I believe counsel is familiar with them.

THE COURT:

Showing the selection of the jury?

MR. SUSMAN:

Yes, Your Honor. And Government Exhibit Number 2 is a certified copy of the indictment of that trial.

MR. CASH:

We will admit the authenticity of the documents, but other than that, we make no admissions, Your Honor.

THE COURT:

They will be *received. Why don't you simply tell these gentlemen of the jury what they are, instead of reading them.*

MR. SUSMAN:

Yes, Your Honor.

(Government's Exhibits 1 and 2 received in evidence.)

MR. SUSMAN:

Gentlemen of the jury, Government Exhibit Number 1 is the minutes of the Court of September 10th, 1962, which shows that the case was (25) being tried, United States against *Lynn K. Peterson, et al*, and it is *Criminal Number 14,342*, and a jury was selected. It lists all the jurors, and Number 6, the name is listed as Edward Singleton, Jr., and alternate juror, Samuel Hart.

It shows that a trial was started and was not completed on that day. The next page merely shows that the trial was concluded at a later date.

(Government Exhibit 2 is a certified copy of the indictment in the trial, which was specified in Government Exhibit Number 1 involving Lynn K. Peterson and William H. Scott, Jr.' (Italics supplied.)

From the foregoing, it will be noticed that the indictment against Peterson and Scott *was never introduced in evidence before the jury*, and therefore there was no proof of the descriptive averments relating to it in the indictment against Slater.

The rule is well settled that when the prosecutor states the offense with greater particularity than he is bound to do, the proof must correspond with the averments. See the following:

U.S. v. Porter, Fed. Cas. No. 16,074, Brunner, Col. Cas. 54, 3 Day 283.
U.S. v. Brown, Fed. Cas. No. 14,666, 5 McLean, 233.
U.S. v. Keen, Fed Cas. No. 15,510, 1 McLean, 429.
Naftzger v. U.S. 200 F. 494, 118 C.C.C. 598.
Kutler v. U.S., 79 F.2d 440.

In the *Keen* case, supra, it was held that an instrument may be set out in an indictment by its legal effect; but, if words descriptive of the instrument are used, they must be proved.

It is further submitted that what the prosecutor told the jury what the exhibits showed, was manifestly unsworn hearsay testimony, and proved nothing. From the foregoing, it is evident that the jury did not have any evidence of the proof of the indictment against Peterson and Scott, although it was alleged in the indictment against petitioner.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Ellis J. Morris
Counsel for petitioner

King & Haynes
Counsel for petitioner

20th day of January, 1964.

CERTIFICATE OF SERVICE

Copies of this petition have been previously served on counsel for Respondent, as provided by the rules of this Court, that is to say that a copy has been sent by Air Mail to the Solicitor General of the United States of America, at Washington, D. C. and a copy has been Mailed to the United States Attorney for the Southern District of Texas, at Houston, Texas.

Ellis F. Morris

ELLIS F. MORRIS,
Counsel for petitioner.

King C. Haynie

KING C. HAYNIE,
Counsel for petitioner.

APPENDIX "A"

United States Court of Appeals

FOR THE FIFTH CIRCUIT

October Term, 1963

No. 20327

D. C. Docket No. 14,447 Criminal

IVORY C. SLATER, *Appellant*

versus

UNITED STATES OF AMERICA, *Appellee*.

Appeal from the United States District Court for the Southern District of Texas.

Before HUTCHESON and BROWN, Circuit Judges, and SIMPSON, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was taken under submission by the Court upon the record and briefs on file;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

November 19, 1963

Issued as Mandate:

APPENDIX "B"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20327

IVORY C. SLATER, *Appellant*

versus

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the Southern District of Texas.

(November 19, 1963.)

Before HUTCHESON and BROWN, Circuit Judges, and SIMPSON, District Judge.

PER CURIAM: This is an appeal from a conviction for offering a bribe to a juror in violation of Title 18, Sec. 206. It is quite clear, we think, that there is nothing of substance in the appeal.

The first and second specifications of error are that the court erred in not directing a verdict on the ground that the evidence was insufficient. A reading of the record shows that there is absolutely no substance in this point. There was direct and positive evidence to support the conviction, indeed it was overwhelming. The third and fourth specifications undertake to charge plain error,—the third that "It was plain error for counsel for the government, while cross-examining appellant, to accuse him of getting some people to commit a crime, where there was no evidence to support it"; the fourth that "It was plain error for counsel for the government, in his argument to the jury, to give unsworn testimony bolstering and sustaining the witnesses for the government by telling the jury that he vouched for the testimony of said witnesses".

Of the first and second specification of error, it is sufficient to say that the proof of guilt was overwhelming and that the court did not err in denying defendant's motions; while of the third and fourth, it is enough to say that the defendant's counsel made no motion for mistrial or objection of any kind below, choosing not to call any attention to the matter but rather to take his chances on the verdict and rely on the claims of error as an ace in the hole, and that the action complained of, if error at all, which we think it was not, was not plain error and was waived by the defendant when he did not object to it. In effect, what the appellant is trying to do is to get his case tried over on the grounds which are frivolous. The judgment must, therefore, be AFFIRMED.

APPENDIX C

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

NO. 20,327

IVORY C. SLATER, *Appellant*
versus
UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the Southern District of Texas.

(December 27, 1963)

Before HUTCHESON and BROWN, Circuit Judges, and SIMPSON, District Judge.

PER CURIAM:

It is ORDERED that the petition for rehearing be, and it is hereby DENIED.

APPENDIX D

IN THE

United States Court of Appeals

FIFTH CIRCUIT

No. 20327

IVORY C. SLATER, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Appeal From The United States District Court For The Southern Division of Texas

APPELLANT'S PETITION FOR REHEARING

To the United States Court of Appeals for the Fifth Circuit and the Honorable Judges thereof:

Now comes Ivory C. Slater, the appellant in the above entitled and numbered cause, and moves the Court to set aside the judgment of affirmance rendered herein on the 19th day of November, A.D. 1963, and grant a rehearing of this cause for the following reasons:

I.

Appellant respectfully submits that the Court erred in holding the evidence sufficient to sustain the verdict, for the reason that the Government failed to prove the de-

scriptive, and material allegations in the indictment against Peterson and Scott, said indictment being an essential part of the indictment of appellant, and pleaded therein. The Court did not specifically pass upon the foregoing contention in its opinion on original submission.

Appellant here refers to pages 4-6, in his brief on original submission, in support of the foregoing contention.

Wherefore, appellant prays that this petition be granted, and that the judgment of the District Court of the United States for the Southern District of Texas, be reversed.

Respectfully submitted,

KING C. HAYNIE
1118 Stanford
Houston, Texas
Attorney for Appellant

CERTIFICATE OF COUNSEL

I, King C. Haynie, attorney for Ivory C. Slater, the appellant, do hereby certify that in my opinion the above and foregoing Petition For Rehearing is well founded in point of law and proper to be filed. And I hereby further certify that the said Petition is filed in good faith and not for the purpose of delay.

KING C. HAYNIE
Attorney for Ivory C. Slater,
Appellant

CERTIFICAAE OF SERVICE

Copies of this Petition For Rehearing have been previously served on counsel for Appellee.

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 780

IVORY C. SLATER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 500–501) is reported at 324 F. 2d 494.

JURISDICTION

The judgment of the court of appeals was entered on November 19, 1963 (R. 502). A petition for rehearing was denied on December 27, 1963 (R. 503–507). The petition for a writ of certiorari was filed on January 23, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

720-627—64

QUESTION PRESENTED

Whether in a prosecution for offering a bribe to a juror the government adequately proved the nature of the case to which the bribe related.

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of Texas of offering a bribe to a juror in a federal criminal trial in violation of 18 U.S.C. 206 (R. 4–5, 459). He was sentenced to imprisonment for five years and fined $5,000 (R. 490). The conviction was affirmed on appeal.

The trial at which the offer of the bribe was alleged to have been made was described in the indictment as "Criminal No. 14,342 * * * in which Lynn K. Peterson was charged with a violation of Section 7201, Title 26, United States Code, and Section 1001, Title 18, United States Code and William H. Scott, Jr., was charged with violation of Section 1001, Title 18, United States Code; * * *" (R. 4).

At the start of the trial the government's attorney showed Government Exhibits 1 and 2 to opposing counsel. This colloquy then followed (R. 122–123):

> Mr. SUSMAN [government attorney]. These are certified copies of the minutes of the Court on September 10th, Your Honor. I believe counsel is familiar with them.
>
> The COURT. Showing the selection of the jury?

Mr. SUSMAN. Yes, Your Honor. And Government Exhibit Number 2 is a certified copy of the indictment of that trial.

Mr. CASH [petitioner's counsel]. We will admit the authenticity of the documents, but other than that, we make no admissions, Your Honor.

The COURT. They will be received. Why don't you simply tell these gentlemen of the jury what they are, instead of reading them.

Mr. SUSMAN. Yes, Your Honor.

(Government's Exhibits 1 and 2 received in evidence.)

Government counsel then explained the documents, saying in part:

> Government Exhibit 2 is a certified copy of the indictment in the trial, which was specified in Government Exhibit Number 1, involving Lynn K. Peterson and William H. Scott, Jr.

In closing argument to the jury government counsel stated (R. 416):

> Now, let's take a look at the evidence. The first evidence the Government introduced was the minutes of the Court, which was Government's Exhibit Number 1, and the second evidence was Government Exhibit Number 2, the indictment in the Peterson and Scott case. That proves, of course, that Edward Singleton, Jr., was on the jury that day, he was a duly qualified juror on September the 10th, and that the case on trial was Lynn K. Peterson and William H. Scott, Jr.; and the indictment, Government Exhibit Number 2, is the charge

which Mr. Scott and Mr. Peterson were being tried for at that time.

ARGUMENT

In view of the record set forth above, which shows that the indictment was received in evidence, the contention that the government did not prove the indictment against Peterson and Scott is frivolous.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
HERBERT J. MILLER, Jr.,
Assistant Attorney General.
BEATRICE ROSENBERG,
ROBERT G. MAYSACK,
Attorneys.

FEBRUARY 1964.

U. S. GOVERNMENT PRINTING OFFICE: 1964